



**NOTICE OF POTENTIAL LIABILITY UNDER THE COMPREHENSIVE
ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT, § 75-10-712, MCA, AND
THE WATER QUALITY ACT, §§ 75-5-101, *et seq.*, MCA,
CERTIFIED MAIL FEBRUARY 12, 2015: RETURN RECEIPT REQUESTED
#70103090000149246147 #70103090000149248059 #70103090000149248066**

February 12, 2015

H.A. True, III
Managing Member
Bridger Pipeline, LLC
P.O. Drawer 2360
Casper, WY 82602

Bridger Pipeline, LLC
455 N. Poplar Street
Casper, Wyoming 82601-0000

Corporation Service Company
P.O. Box 1691
26 W. Sixth Ave.
Helena, Montana 59624-1691

Re: Bridger Pipeline, LLC Poplar Pipeline Crude Oil Discharge to the Yellowstone
River, Glendive Montana

To whom it may concern:

The purpose of this letter is to provide notice to Bridger Pipeline, LLC (Bridger) about its liability and responsibility under two Montana statutes, the Comprehensive Environmental Cleanup and Responsibility Act (CECRA), Sections 75-10-701, *et seq.*, MCA, and the Water Quality Act (WQA), Section 75-5-101, *et seq.*, MCA. Pursuant to Section 75-10-712, MCA, of CECRA, the Montana Department of Environmental Quality (DEQ) hereby notifies you that Bridger has been identified as a potentially liable person for hazardous or deleterious substance contamination from the Bridger Poplar Pipeline crude oil discharge to the Yellowstone River (Poplar Discharge), occurring approximately seven miles upstream of Glendive, Dawson County, Montana. The Poplar Discharge occurred on or about January 17, 2015, when much of the Yellowstone River was covered in ice. The Poplar Discharge released approximately 925 barrels of crude oil into the Yellowstone River and this crude oil is a "hazardous or deleterious substance" as that term is defined in Section 75-10-701, MCA. Some of the spilled crude oil appears to have been trapped under the ice near the release, and some of the oil was transported downstream in the Yellowstone River. Oil sheens are visible in open water areas, and dissolved petroleum constituents have been detected in river water. The areas impacted include, but are not necessarily limited to, the waters, sediments, and river bed of the Yellowstone River. Crude

oil trapped underneath ice may also be deposited on soil along the river as the ice thaws. The Poplar Discharge, including the broken Bridger Poplar Pipeline, and any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located, is a "Facility" as that term is defined in Section 75-10-701, MCA.

DEQ has determined that the Poplar Discharge involved a release of hazardous or deleterious substances into the environment that required an "immediate response to an imminent threat to public health, safety, or welfare or the environment...to avoid substantial injury or damage to persons, property, or resources." *See* § 75-10-712, MCA. Hazardous or deleterious substances, including, but not limited to petroleum products, have been released into the environment at the Poplar Discharge.

The Poplar Discharge occurred suddenly and without prior warning to DEQ. It required a significant and immediate outlay of DEQ resources. For these reasons, DEQ is taking remedial action pursuant to Section 75-10-711(1), MCA, without the prior written notice generally provided under Section 75-10-711(3), MCA.

Through this letter, DEQ is giving written notice to Bridger that it has been identified as a potentially liable person according to Section 75-10-715(1)(a) & (b), MCA, because of its status as a current owner and/or operator of the Facility and/or a person who at the time of disposal of a hazardous or deleterious substance owned or operated a Facility where the hazardous or deleterious substance was disposed of. Bridger may also have additional bases for liability. DEQ reserves the right to identify additional bases of liability and additional potentially liable persons in the future. If Bridger is aware of any other persons that may be potentially liable under Section 75-10-715, MCA, please contact DEQ as soon as possible and provide DEQ with the names of these persons.

Although this letter is issued pursuant to Section 75-10-712, MCA, DEQ is including the following language in order to be consistent with notice letters issued pursuant to Section 75-10-711, MCA, of CECRA. Section 75-10-711, MCA, provides that the written notice must inform "the person that if subsequently found liable pursuant to 75-10-715(1), the person may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to this part."

DEQ has been tracking expenditures related to its response to the Poplar Discharge and may begin billing Bridger for remedial action costs. DEQ will not directly bill Bridger for DEQ costs that are billed to DEQ's Pollution Removal Funding Authorization (PRFA) received from the federal government. DEQ is tracking and separating costs that are submitted for PRFA reimbursement from costs that are not submitted for PRFA reimbursement, to prevent any duplicative charges. At this time, the PRFA is not expected to cover all of DEQ's remedial action costs in responding to the Poplar Discharge.

It also is a violation of the WQA to cause pollution of any state waters, or to place or cause to be placed wastes where they will cause pollution of any state waters. Section 75-5-605(1)(a), MCA. Water quality standards state that surface water must be free of a visible oil film.

Therefore, the presence of crude oil in the waters of the Yellowstone River exceeds standards and is a violation of the WQA.

At a minimum, Bridger must complete the actions identified in Attachment A of this letter, unless DEQ modifies a requirement. Bridger must send written notification to DEQ by February 26, 2015, stating Bridger's commitment to conduct the actions outlined in Attachment A. These actions are necessary to determine the need for further remedial action and to ensure protectiveness of human health and the environment. A tentative schedule of implementation that addresses Attachment A must accompany the letter of commitment. For any deadlines included in Attachment A that Bridger does not think that it will be able to meet, Bridger must propose alternative deadlines. If Bridger is unable or unwilling to properly and expeditiously perform the remedial actions outlined in Attachment A, DEQ may undertake the actions itself and require Bridger to reimburse all of DEQ's remedial action costs in doing so and/or take additional actions to require compliance. Please note that failure to respond to this letter or complete the remedial actions required by Attachment A may result in DEQ determining that Bridger is not properly and expeditiously performing the DEQ-required work.

DEQ will provide Bridger with future required remedial actions/compliance in additional letters. Bridger should also expect an information request pursuant to Section 75-10-707, MCA. DEQ also will be seeking to negotiate with Bridger to enter into a settlement to address final compliance and penalties. DEQ will be contacting you shortly to begin discussions.

By February 26, 2015, please provide Bridger's commitment to conduct the actions within Attachment A. Please direct technical questions regarding the Facility to Laura Alvey at (406) 444-0212 or lalvey@mt.gov and legal questions to Katherine Haque-Hausrath at (406) 444-6490 or khaquehausrath@mt.gov. If you would like to have a meeting to discuss the technical requirements of Attachment A, please contact Laura Alvey by March 13, 2015.

Sincerely,



Jenny Chambers
Remediation Division Administrator

cc: John North, DEQ Legal (all cc's sent via email)
Katherine Haque-Hausrath, DEQ Legal
Laura Alvey, DEQ Remediation
John Arrigo, DEQ Enforcement
Julie DalSoglio, EPA Region 8, Helena Office
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ATTACHMENT A

Department of Environmental Quality's Remedial Action Requirements for the Bridger Poplar Pipeline Crude Oil Discharge to the Yellowstone River

1. Bridger Pipeline, LLC (Bridger) must comply with State of Montana requirements at all places where contamination has come or may have come to be located and/or at which alteration of state waters has or may have occurred from the Poplar Discharge. In some cases, these requirements may be in addition to and/or more stringent than those requirements set forth during the initial response by Unified Command. DEQ reserves the right to require Bridger to conduct assessment, sampling, analysis, monitoring, cleanup, and other work that DEQ determines to be necessary under any applicable state or federal law. Please be aware that DEQ is making every effort to coordinate these requirements with the goals and plans of the Unified Command.
2. **Mass Balance and Weathering:** By **March 20, 2015**, Bridger must prepare a mass balance and a product weathering analysis for the oil that was released into the Yellowstone River. As part of the mass balance, Bridger must provide estimates for the amounts of the various fractions/components of the oil that were recovered, evaporated, dissolved into the water, or were likely adsorbed to sediments. The information and assumptions used to develop the mass balance must be clearly described. The weathering analysis must describe the physical, chemical, and toxicological properties of the crude oil over time. The report of the mass balance and weathering analysis must be provided to DEQ and Unified Command prior to ice breakup, with the goal of estimating the quantity of oil remaining under the ice that will be released during ice break up, and also the properties of that oil. This information will help the response effort after ice breaks up on a variety of fronts (agricultural, wildlife, human health, etc.)
3. **Sediment and Surface Water:** Crude oil from the Poplar Discharge may have been deposited and become entrained with sediments in the river bed, banks, and in and around public water supply (PWS) intakes and settling structures. In order to address these issues, DEQ requires the following corrective actions:
 - a. Conduct sediment and co-located water sampling program at PWS intake structures at Glendive and the Montana Dakota Utilities facility near Sidney, irrigation diversions, and other structures as appropriate (i.e., any other structures where water is removed from the river and it may expose additional human or ecological receptors). An initial round of sediment samples must be collected within 30 days of receipt of this February 12, 2015 Notice/Violation Letter, followed by quarterly sampling thereafter. Sediment samples must be analyzed as described in requirement 3.e. (below). Surface water samples must be analyzed for Extractable Petroleum Hydrocarbon (EPH) Screen, Volatile Petroleum Hydrocarbons (VPH), and polynuclear aromatic hydrocarbons (PAHs) via Method 8270 (low level detection limits). If the EPH Screen produces a Total Extractable Hydrocarbon (TEH) value greater than 1,000 micrograms per liter ($\mu\text{g/l}$) for water samples, then the sample must be further analyzed for EPH Fractions.

- b. Based on the results of the initial rounds of samples, DEQ reserves the right to require additional work to address impacts to surface water, including the PWS systems. PWS intakes provide opportune locations to evaluate the potential for crude oil contamination of public drinking water supplies.
 - c. By **March 6, 2015**, please prepare and submit a work plan and schedule for a PWS Sediment and Co-located Water Sampling Program for DEQ's review and approval. The work plan must include a brief description of the locations and results of sediment samples already collected. The PWS work plan may reference work plans already approved by the Incident Command.
 - d. After ice breakup, oil currently trapped under ice is expected to move downstream. Bridger must conduct oil reconnaissance efforts to document how the oil moves and is deposited, and DEQ will likely require additional cleanup. After those cleanup actions have been completed, for confirmation purposes, DEQ will require that Bridger conduct a sediment sheen survey, focusing initially on areas where the presence of crude oil is known or suspected, based on hydrologic modeling of river characteristics and predicted oil trajectories, and/or visual signs of contamination. The sediment survey must include probing sediments to search for qualitative signs of oiling (such as staining, sheen production, and odor), followed by quantitative assessment (collecting samples for laboratory analysis from a statistically appropriate subset of sediment samples that show oiling, and from water where oiled sediment exists). During the sediment survey, oil-absorbent materials must be available to capture any sheen that may be generated.
 - e. Sediment samples submitted for laboratory analysis must be analyzed for EPH Screen, PAHs via 8270 (low level detection limits), and VPH. If the EPH Screen produces a TEH value greater than 200 mg/kg, then the sample must be further analyzed for EPH Fractions. Other methods for analyzing the sediment may also be available and Bridger may propose alternative methods for DEQ approval. Depending on the results of the investigation, DEQ may require additional sediment investigation and/or cleanup.
 - f. After ice break up, oil reconnaissance, and Phase III oil cleanup (as described in the Interim Response Plan), please prepare and submit a work plan and schedule for a Sediment Sheen Survey for DEQ's review and approval. DEQ may set a deadline for the submittal of this work plan based upon future events.
4. **Groundwater:** While DEQ understands, based upon available hydrogeologic information, that it appears the Yellowstone River is a gaining river between the release and Sidney, Bridger must nonetheless conduct a groundwater investigation in "worst case" areas along the Yellowstone River where crude oil and/or oil-impacted surface water may have migrated into soils, sediments and groundwater, or in areas where crude-impacted river water may have migrated via recharge into the groundwater. Bridger must focus on existing wells with the most potential to be contaminated. These are wells that are shallow (less than 50 feet deep), close to the river (within ¼ mile of the bank), and are located upstream of Glendive. Additionally, please utilize DEQ's online resources to screen out groundwater sampling locations that are near existing sources of contamination (underground storage tanks, etc). At a minimum, wells must be sampled prior to the ice breaking up (before potential over-land distribution of the oil currently entrained in the ice), and then after Phase III oil cleanup (for confirmation purposes). Groundwater samples must be analyzed for EPH screen, VPH,

and PAHs via 8270 (low level detection limits). If the EPH screen produces a TEH value greater than 1,000 micrograms per liter (ug/l, then the sample must be further analyzed for EPH fractions.

DEQ will evaluate the results of this initial sampling and determine the need for additional sampling and/or additional work. The results will also be useful for crafting informational materials for farmers, ranchers, and other groundwater users downstream of the discharge. If groundwater contamination is detected, additional sampling of residential and irrigation wells in the area and/or other work will likely be required.

As of the date of this letter, Bridger has submitted a work plan and schedule for a Groundwater Investigation for DEQ's review and approval. The work plan identifies the proposed groundwater wells and rationale for why Bridger has identified these wells as "worst-case," pursuant to the criteria outlined above.

5. **Soil Sampling:** DEQ will evaluate the results of the cleanup and the extent of the soil contamination following ice break-up. DEQ may provide Bridger with additional soil sampling and remediation requirements following this evaluation.
6. **Reclamation:** Bridger must reclaim and revegetate, including weed control, all areas disturbed by investigation and cleanup activities. Along with meeting DEQ requirements, Bridger will need to work with the Dawson County Conservation District and the affected landowner to ensure proper weed control, reclamation, and revegetation.

By **March 27, 2015**, please prepare and submit a work plan and schedule for reclamation and revegetation of the areas that have already been disturbed. The work plan must include criteria that will be used to measure and document the successful completion of reclamation and revegetation in compliance with all applicable or relevant environmental requirements, criteria, or limitations (ERCLs). Additional plans may need to be prepared, depending upon the disturbance caused by future response actions.

7. DEQ recognizes that, in some areas and circumstances, it may be necessary to leave some oiled soil, sediment, vegetation, or debris in place. In some cases, oil may be left in place because of health and safety concerns to cleanup workers (for example, it may be dangerous for cleanup workers to attempt to recover oiled debris in and under large debris fields or piles). In other cases, oil may be left in place because the cleanup process would "do more harm than good" (for example, more long-term damage might be posed to the environment by constructing roads, spreading weeds, causing erosion, and damaging native plant communities or damaging historical or cultural resources to remove oil versus leaving the oil in place to naturally degrade). In such circumstances, and on a case-by-case basis, DEQ may approve the use of monitored natural attenuation (MNA) for the Poplar Discharge. If MNA is proposed for the Poplar Discharge, DEQ will require submission of additional location-specific MNA-work plans.

8. Please be aware that some of the work plan activities, such as accessing the flood plain to conduct certain activities, may require permits or approval from the U.S. Army Corps of Engineers, the Dawson County Conservation District, and/or DEQ. It is Bridger's responsibility to obtain all necessary permits and comply with all applicable or relevant local, state or federal ERCLs. Please see http://deq.mt.gov/StateSuperfund/VCRA_Guide/AttGERCLs.pdf for an example of ERCLs that may apply to the remedial actions. Note that there may be additional ERCLs that are applicable or relevant and are not listed in the linked document.
9. Bridger must compare sampling results to the following standards or screening levels, as applicable:
 - **Surface water samples:** Circular DEQ-7 Montana Numeric Water Quality Standards (October 2012) and applicable provisions of Administrative Rules of Montana, Chapter 17, Subchapter 30, Part 600, *et seq.* Surface water sample results for EPH and VPH fractions may be preliminarily compared to DEQ's Tier 1 Risk-Based Screening Levels (RBSLs) set forth in Table 3 of Montana Tier 1 Risk-Based Corrective Action for Petroleum Releases (September 2009), with the recognition that these RBSLs were calculated for groundwater and the protection of human health and may not be protective of ecological receptors. Surface water results may need to be further evaluated from an ecological risk perspective.
 - **Groundwater samples:** Circular DEQ-7 Montana Numeric Water Quality Standards (October 2012), and Risk-Based Screening Levels (RBSLs) identified in RBCA (September 2009).
 - **Soil samples:** Tier 1 RBSLs identified in RBCA (use the "residential, less than 10 feet to groundwater" scenario for the initial comparison). U.S. EPA Regional Screening Levels (January 2015), adjusted in accordance with ARM 17.55.109 and the State Superfund Unit soil screening process:
http://deq.mt.gov/StateSuperfund/VCRA_Guide/ss_flowchart.pdf.
 - **Sediment samples:** U.S. Environmental Protection Agency Region 3 Biological Technical Assistance Group Freshwater Sediment Screening Benchmarks (August 2006).
 - Site-specific background levels may also be used for soil or sediment screening purposes; however, DEQ must approve the background sample locations and levels. To the extent applicable, soil samples may also be compared to the Montana Department of Environmental Quality, Remediation Division, Table 4-4, Background Concentrations of Inorganic Constituents in Montana Surface Soil (September 2013).
10. Work plans must contain sufficient detail for DEQ to determine that the work will be conducted according to DEQ's requirements and all applicable or relevant local, state or federal ERCLs. The work plans must reference all relevant standard operating procedures (SOPs) (and include copies of SOPs in an appendix) and/or a DEQ-approved Quality Assurance Project Plan.
11. Bridger must provide DEQ with reports to document and analyze all sample results and the effectiveness of the completed corrective actions. Reports to DEQ must contain the following, as appropriate (this is not an exhaustive list):

- A description of the discharge and any initial work and/or remedial actions conducted for the Poplar Discharge;
- A discussion of the remedial actions conducted for the Poplar Discharge and how the work meets the requirements of this letter;
- Tables, graphs, etc. depicting all sampling results, along with a comparison to the relevant screening/cleanup levels;
- All analytical results, laboratory data sheets, laboratory checklists, and chain-of-custody sheets;
- All laboratory data must be submitted as Electronic Data Deliverables to EPA's Scribe database;
- Copies of field log books and/or field log forms;
- Copies of photographs documenting the work discussed in the report;
- A map or maps of anywhere contamination has come to be located from the Poplar Discharge. At least one map must show the locations of any potential human and ecological receptors. The locations of all samples collected must be indicated on a map. If excavation or other cleanup activities have occurred, the boundaries of the excavation or other cleanup activity must be indicated on a map, along with the location of confirmation samples.
- A discussion of data quality, including: holding times and temperatures, sample preservation, any laboratory data quality issues, results of blanks and duplicates, etc. A copy of the data validation report must be attached along with the laboratory data package;
- A discussion of any deviations from the work plan(s), including why the deviations occurred and corrective measures taken;
- Groundwater monitoring reports must include a potentiometric surface map (if applicable) and a discussion of groundwater flow directions, gradient, and other pertinent information;
- Reclamation, revegetation, and weed control actions taken;
- Any recommendations for future work and/or remedial actions for the Poplar Discharge.

Two hard-copies, one modifiable electronic copy and one PDF on compact disk of work plans and schedules should be submitted to:

Laura Alvey
Remediation Division
Department of Environmental Quality
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Helena, MT 59620